7. (Amended) The flavor enhancing oil of Claim 5, further comprising disodium guanylate and disodium inosinate, wherein the ratio of disodium guanylate to disodium inosinate is between about 1:0 to about 0:1.

A2

REMARKS

A. Status of the Case

Claim 1 is rejected under 35 U.S.C. §102(b) as being anticipated by Stoltz (U.S. Patent No. 5,650,185). Claims 2-11 are rejected under 35 U.S.C. §103(a) as obvious in view of Stoltz. Claims 10 and 11 are cancelled with this Response. After the present Amendment, Claims 1-9 are pending in the case.

Claim 1 is amended to recite the inclusion of a matrix-forming material comprising silicon dioxide. Support for this amendment is found at page 5, lines 25-30 of the Specification. Claim 7 is amended to provide proper antecedent basis for the terms "disodium guanylate" and "disodium inosinate."

Attached hereto is a marked-up version of the changes made to Claims 1 and 7 by the current Amendment. The attached page included as part of this Response is captioned "Version with Markings to Show Changes Made."

No new matter is added.

B. Rejection of Claim 1 under 35 U.S.C. §102(b) as Anticipated by Stoltz

Claim 1 is rejected under 35 U.S.C. §102(b) as anticipated by Stoltz (U.S. Patent No. 5,650,185). To anticipate a claim, the cited reference must recite each and every element recited in a claim as arranged in the claim. *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978); *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir 1984). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131.

Amended Claim 1 requires a flavor enhancing oil comprising: (a) at least one edible liquid oil; (b) a matrix-forming material comprising silicon dioxide; and (c) a flavor enhancing amount of at least one water soluble flavor enhancer, wherein said water soluble flavor enhancer is uniformly dispersed throughout the edible liquid oil. (Claim 1) Stoltz, however, does not teach or disclose a flavor enhancing oil comprising a matrix-forming material comprising silicon dioxide or a water soluble flavor enhancer. Because Stoltz does not teach or disclose these claim limitations, Stoltz does not anticipate Claim 1. Accordingly, Applicants respectfully request that the Examiner's rejection be withdrawn.

In the 6/18/01 Office Action, the Examiner states, "Stoltz teaches a flavor enhancer formulation comprising oil and a flavor." (6/18/01 Office Action, page 2) The present invention, however, requires a water soluble flavor enhancer, not merely any type of "flavor." Because Stoltz does not recite each and every element recited in Claim 1 as arranged in the claim, Claim 1 is not anticipated by Stoltz. Accordingly, the Examiner's anticipation rejection should be withdrawn.

C. Rejection of Claims 2-11 under 35 U.S.C. §103(a) as Obvious in View of Stoltz

The Examiner rejects Claims 2-11 under 35 U.S.C. §103(a) as obvious in view of Stoltz. In view of the cancellation of Claims 10 and 11 with this Response, the rejection of Claims 10 and 11 is now moot. As to the Examiner's rejection of remaining Claims 2-9, Applicants respectfully submit that this rejection is improper because the Examiner has not established a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2142, §2143; *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In the present application, the Examiner's obviousness rejection is improper because Stoltz does not teach or suggest all the claim limitations.

Claims 2-9 require a flavor enhancing oil comprising, *inter alia,* a matrix-forming material comprising silicon dioxide and a flavor enhancing amount of at least one water soluble flavor enhancer. Claim 2 requires that the water soluble flavor enhancer comprise at least one nucleotide flavor enhancer, and Claim 3 requires that the water soluble flavor enhancer comprise at least one amino acid flavor enhancer. Furthermore, Claims 4 and 6-9 must comprise the nucleotide flavor enhancers disodium guanylate, disodium inosinate, or particular combinations thereof; Claim 5 requires that the amino acid flavor enhancer comprise MSG.

As discussed *supra* in reference to the Examiner's anticipation rejection, Stoltz does not teach or disclose a matrix-forming material comprising silicon dioxide, nor does Stoltz teach or disclose a water soluble flavor enhancer. Furthermore, Stoltz does not teach or disclose the use of nucleotide flavor enhancers or amino acid flavor enhancers, much less the specific ones required by the present invention.

In the 6/18/01 Office Action, the Examiner states:

> The claims differ as to the use of specific flavor enhancers. All of the claimed flavor enhancers are notoriously well-known in the art and are used merely for their art-recognized function. It would have been obvious . . . to use any of the claimed flavor enhancers in that of Stoltz

because the use of flavor enhancers and the specific flavor enhancers are conventional in the art. (6/18/01 Office Action, pages 2-3)

The Examiner states that the "claims differ as to the use of specific flavor enhancers" and yet, without pointing to any references whatsoever, nonetheless concludes that it would have been obvious to have used any of them in the oil of Stoltz. Furthermore, without pointing to any references in support, the Examiner states that the "claimed flavor enhancers are notoriously well-known in the art" and that they are being used "merely for their art-recognized function." The Examiner has provided no support whatsoever for these assertions.

To establish a prima facie case of obviousness, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2143.03. Thus, in order to establish a *prima facie* case of obviousness in the present case, it must be shown that Stoltz teaches or suggests a matrix-forming material comprising silicon dioxide, a water soluble flavor enhancer, and the specific nucleotide and amino acid flavor enhancers recited by the claims. This the Examiner has not done. Because each and every claim limitation is not taught or suggested by the cited reference, the Examiner's rejection is improper and should be with drawn.

CONCLUSION

The Examiner is respectfully requested to reconsider the Application in view of the foregoing Amendments and Remarks and to allow all pending claims as patentable.

Respectfully submitted,

For: Zyzak et al.

By Melody A. Jones

Melody A. Jones
Attorney for Applicants
Registration No. 44,175
(513) 634-6944

September 18, 2001
Cincinnati, Ohio

Version with Markings to Show Changes Made

In the claims:

Claims 10 and 11 have been cancelled without prejudice.

Claims 1 and 7 have been amended as follows:

1. (Amended) A flavor enhancing oil, comprising:

a) at least one edible liquid oil; [and]

b) a matrix-forming material comprising silicon dioxide; and

c)[b)] a flavor enhancing amount of at least one water soluble flavor enhancer, wherein said water soluble flavor enhancer is uniformly dispersed throughout said edible liquid oil.

7. (Amended) The flavor enhancing oil of Claim 5, further comprising disodium guanylate and disodium inosinate, wherein the ratio of disodium guanylate to disodium inosinate is between about 1:0 to about 0:1.